

PEARSON, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JOSEPH BROWN,	)	CASE NO. 1:11CV01882
	)	
Plaintiff,	)	
	)	JUDGE BENITA Y. PEARSON
v.	)	
	)	
STATE OF OHIO,	)	
	)	<b><u>MEMORANDUM OF OPINION AND</u></b>
Defendant.	)	<b><u>ORDER</u></b>

On September 7, 2011, *Pro se* Plaintiff Joseph Brown, an inmate at the Cuyahoga County Jail, filed this [42 U.S.C. § 1983](#) against the State of Ohio. [ECF No. 1](#). In his Complaint, Plaintiff alleges that, on April 29, 2003, he did not waive his right to a preliminary hearing. [ECF No. 1](#). Plaintiff further alleged that on June 23, 2011, he was

denied his preliminary hearing and indicted without being allowed to appear and defend in person and with counsel; to review the evidence against him, to demand the nature and cause of the accusation(s) against him[,] to meet witness[es] face to face, and to have compulsory process to procure attendance of witness[es] on his behalf in violation of due process of the 14<sup>th</sup> Amendment of the Constitution of the United States.

[ECF No. 1](#).

For the reasons stated below, this cause of action is dismissed pursuant to [28 U.S.C. § 1915A](#).

**I. Law and Analysis**

A district court is expressly required to dismiss any civil action filed by a prisoner seeking relief from a governmental officer or entity, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if

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the plaintiff seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. §1915A](#); [Siller v. Dean](#), Case No. 99-5323, 2000 WL 145167, at \*2 (6th Cir. Feb. 1, 2000).

Principles requiring generous construction of *pro se* pleadings are not without limits. [Beaudett v. City of Hampton](#), 775 F.2d 1274, 1277 (4th Cir. 1985). A complaint must contain either direct or inferential allegations respecting all the material elements of some viable legal theory to satisfy federal notice pleading requirements. See [Scheid v. Fanny Farmer Candy Shops, Inc.](#), 859 F.2d 434, 437 (6th Cir. 1988). District courts are not required to “conjure up questions never squarely presented to them” or “construct full blown claims from sentence fragments.” [Beaudette](#), 775 F.2d at 1278. To do so would “require[] [the] courts to explore exhaustively all potential claims of a *pro se* plaintiff, . . . [and] would . . . transform the district court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party.” *Id.*

Even liberally construed, the Complaint does not contain allegations reasonably suggesting Plaintiff might have a valid federal claim. The purpose of a preliminary hearing is to determine whether sufficient facts exist to allow the court to bind the accused over to the grand jury. [State v. Minamyler](#), 12 Ohio St. 2d 67, 69 (Ohio 1967). There is no constitutional right to a preliminary hearing, however, when an indictment is returned. [Zaffino v. Konteh](#), Case No. 5:05CV1485, 2006 WL 2360902, at \* 4 (N.D. Ohio Aug. 15, 2006); [State ex rel. Pena v. Konteh](#), Case No. L-07-1248, 2007 WL 2216967, at \*1 (Ohio App. 6th Dist., Aug. 1, 2007). Further, to the extent Plaintiff seeks to challenge “the very fact or duration of his physical imprisonment, . . . his sole federal remedy is a writ of habeas corpus.” [Preiser v. Rodriguez](#), 411 U.S. 475, 500

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[\(1973\).](#)

## II. Conclusion

Accordingly, *Pro se* Plaintiff Joseph Brown's cause of action is dismissed under [28 U.S.C. § 1915A](#). Further, the Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

December 6, 2011

Date

/s/ Benita Y. Pearson

Benita Y. Pearson

United States District Judge